

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

KENNETH E. SHRADER,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

Case No. 09-CV-172-FHM

OPINION AND ORDER

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 31] is before the court for decision. The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) is GRANTED.

The court remanded this case to the Commissioner for further administrative action, pursuant to sentence four of 42 U.S.C. § 406(g). On remand the Commissioner issued a fully favorable decision. Counsel's motion for relief under Rule 60(b)(6) was filed just over a month after the issuance of the decision. Counsel represents that, as of the date of filing the instant motion, the Notice of Award containing the amount of past due benefits has not been received. Consequently, the amount of the contingent attorney fee cannot be ascertained. Counsel requests an order allowing the filing of the motion for 406(b) fees within sixty days of receipt of the Notice of Award. In response to the instant motion, "[t]he Commissioner declines to assert a position on this request." [Dkt. 32, p. 1].

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 31] is GRANTED. A motion for an attorney fee award under §406(b), together with

the required notice to Plaintiff and statement concerning any objection thereto, may be filed within 60 days of the Notice of Award.

SO ORDERED this 13th day of February, 2012.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE